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Before the  
**FEDERAL COMMUNICATIONS COMMISSION** DA No. 95-1130  
Washington, D.C. 20554  
JUN 25 PM '95

DISPATCHED BY

In the Matter of )  
)  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding )  
)  
Waiver of Section 24.813 )  
of the Commission's Rules -- )  
General Application Requirements )  
for the Broadband Personal )  
Communications Service )

PP Docket No. 93-253

**ORDER**

**Adopted:** May 16, 1995

**Released:** May 19, 1995

By the Chief, Wireless Telecommunications Bureau

1. The Commission, through the Chief of the Wireless Telecommunications Bureau pursuant to delegated authority, on its own motion, waives certain provisions of Section 24.813(a) of the Commission's rules, for purposes of short-form applications (Forms 175) to be filed for C block licenses in the broadband personal communications service (PCS). We find that requiring the submission of some ownership information may be unduly burdensome and will not serve the underlying purpose of the ownership disclosure rules.

2. Section 24.813(a) of the Commission's rules provides that parties filing the short-form application, Form 175, to participate in broadband PCS auctions shall include in an exhibit, *inter alia*:

(1) A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, attributable stockholder or key management personnel of the applicant. This list must include a description of each such business's principal business and a description of each such business's relationship to the applicant.<sup>1</sup>

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<sup>1</sup> See Section 24.813(a)(1) of the Commission's rules, *Fourth Memorandum Opinion and Order*, PP Docket 93-253, FCC 94-264 at Appendix B, (released Oct. 19, 1994).

(2) A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (e.g., If Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).<sup>2</sup>

Section 24.813(a) also requires:

(4) In the case of partnerships, the name and address of each partner, each partner's citizenship and the share or interest participation in the partnership. This information must be provided for all partners, regardless of their respective ownership interests in the partnership. A signed and dated copy of the partnership agreement must be included in the application.<sup>3</sup>

Section 24.819 of the Commission's rules provides that the Commission may waive a broadband PCS rule if the underlying purpose of the rule will not be served by its application in a particular case, and grant of a waiver is otherwise in the public interest; or if the unique facts and circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.

3. The Wireless Telecommunications, acting on delegated authority, recently waived some of the information disclosure requirements of Section 24.813(a)(1) and 24.813(a)(2) requirements for the Form 175 applications that were filed for the auction of A and B block broadband PCS licenses.<sup>4</sup> The Wireless Telecommunications Bureau has decided to adopt an analogous waiver for the auction of C block broadband PCS licenses. Specifically, our rules require applicants to list in their short-form applications all businesses in which each attributable stockholder owns at least 5 percent. This requirement necessitates reporting of interests in firms with no relation to the services for which licenses are being auctioned, and for many companies, particularly investment firms with diverse holdings, it is extremely burdensome, especially when calculating indirect ownership interests in outside firms using the multiplier. We believe that, for purposes of short-form application processing, requiring stockholders in applicants to report *all* firms in which they hold an interest of 5 percent or more is excessively burdensome.

4. The purpose of the ownership disclosure requirements is to allow the Commission

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<sup>2</sup> See Section 24.813(a)(2) of the Commission's rules, *Fifth Report and Order*, PP Docket 93-253, FCC 94-178 at Appendix B (released July 15, 1994).

<sup>3</sup> *Id.* at § 24.813(a)(4).

<sup>4</sup> See *Order* in PP Docket No. 93-253, 9 FCC Rcd 6392 (1994).

to determine who is the real party in interest,<sup>5</sup> to determine compliance with the anticollusion rules<sup>6</sup> and ownership restrictions such as the multiple-and cross-ownership rules<sup>7</sup> and the alien ownership restrictions.<sup>8</sup> All applicants already must certify that they are in compliance with these regulations, and the applicants themselves should be able to supply the bulk of the information required by Section 24.813(a) without significant burden. However, we believe that requiring that information about all attributable stockholders' other interests be provided on the short-form application would not serve these purposes. Moreover, since short-form procedures are generally designed to "reduce the administrative burdens at the initial stages of the auction process, avoid unnecessary delay in the initiation of service, and encourage applicants to participate in the process,"<sup>9</sup> we find that relaxing the disclosure requirements in this regard serves the public interest.

5. Consequently, we waive the information disclosure requirement of Section 24.813(a)(1) and 24.813(a)(2) with respect to other, outside ownership interests of attributable stockholders of applicants, except that direct, attributable ownership interests in other Commercial and Private Mobile Radio Service licensees or applicants shall be disclosed.<sup>10</sup> All long-form reporting requirements will continue to apply. We remind applicants for the C block that they are subject to all other Form 175 requirements, as set forth in our rules and on the form. Also, in order to participate in the auction, each applicant for the C block auction must consent on the Form 175 to a possible audit of its records and enterprise.<sup>11</sup>

6. Applicants have also previously brought to our attention an additional problem caused by the requirement of Section 24.813(a)(4) to submit signed and dated copies of partnership agreements. These parties point out that partnership agreements often discuss strategic business objectives and financial and business obligations, including bidding

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<sup>5</sup> Compare 47 C.F.R. §§ 22.13, 24.413; see also *Real Party in Interest Disclosure*, 55 RR 2d 1053 (1982).

<sup>6</sup> See Section 1.2105 of the Commission's rules. See also *Memorandum Opinion and Order*, PP Docket 93-253, FCC 94-295 (released Nov. 17, 1994) at Appendix.

<sup>7</sup> See Sections 24.204 and 24.229(c) of the Commission's rules.

<sup>8</sup> See 47 U.S.C. § 310(b).

<sup>9</sup> *Second Report and Order*, PP Docket 93-253, 9 FCC Rcd 2348, 2376 ¶ 162 (1994).

<sup>10</sup> See Section 20.6 of the Commission's Rules, *Third Report and Order*, GN Docket No. 93-252 at Appendix B (released Sept. 23, 1994).

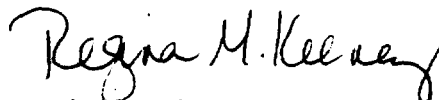
<sup>11</sup> See also Section 24.709(d) of the Commission's Rules, *Fifth Memorandum Opinion and Order*, PP Docket 93-253, FCC 94-285 (released Nov. 23, 1994) at Appendix B, *erratum*, DA 95-19 (released Jan. 10, 1994).

strategies, and might be highly competitively sensitive. In addition, the identities of partners and other attributable parties, and their stake in the applicant, are fully disclosed pursuant to the rules. We agree that submission of the information in partnership agreements with the short-form application might be highly detrimental and inequitable to applicants that are partnerships and would not serve the purposes described above. Consequently we waive the requirement that partnerships submit a signed and dated copy of the partnership agreement along with the short-form application. The requirement to submit the contents of the agreements with the long-form application remains will apply to winning bidders. We remind applicants, however, that in accordance with Part 0 of the Commission's rules they may submit the required information from the partnership agreement in confidence.<sup>12</sup>

7. Accordingly, IT IS ORDERED that the requirements of Sections 24.813(a)(1) and 24.813(a)(2) ARE WAIVED to the extent described above with respect to short-form applications (Forms 175) for C block broadband PCS licenses.

8. IT IS FURTHER ORDERED that the requirement of Section 24.813(a)(4) that a signed and dated copy of the partnership agreement be included with the short-form application for C B block broadband PCS licenses IS WAIVED.

FEDERAL COMMUNICATIONS COMMISSION



Regina M. Keeney  
Chief

WIRELESS TELECOMMUNICATIONS BUREAU

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<sup>12</sup> See 47 C.F.R. § 0.459.